

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

SANDRA WATERS-LEVY,

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Plaintiff,

*

v.

* Civil Action No: 1:11-cv-1192

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**LAW OFFICES OF
SHAPIRO & BURSON, LLP**

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Defendants.

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S&B'S MOTION TO DISMISS COUNTS III, IV, and V OF THE COMPLAINT

Defendant Shapiro & Burson, LLP ("S&B") hereby moves to dismiss Counts III, IV, and IV of the Complaint filed by Plaintiff, Sandra Waters-Levy, ("Plaintiff"), pursuant to Federal Rule of Civil Procedure 12(b)(6),¹ for failure to state a claim for which relief may be granted as a matter of law, for the reasons stated in the contemporaneously filed memorandum, and including:

1. Plaintiffs claim that Green Tree Servicing LLC ("Green Tree") was not entitled to foreclose because it is a loan servicer, and not the owner of the loan, is without merit. Both the Commercial Code and Virginia Real Property recognize that the right of a holder to foreclose, as well as a loan servicer, and beneficiary.

2. Green Tree is the holder, loan servicer, and beneficiary of the loan, and therefore constitutes the creditor to whom the debt is owed.

3. Plaintiffs' claim that S&B misrepresented that the note was unavailable is immaterial, and Plaintiffs fail to articulate how they reasonably relied upon such alleged

¹ S&B has contemporaneously filed an Answer to Counts I and II.

misrepresentation. If the note was actually available, Plaintiff would be afforded less protections.

4. Plaintiff's claim that S&B "falsely" represented that Green Tree was the beneficiary of the Deed of Trust is belied by the recorded assignment attached hereto as Exhibit A and by its status as holder of the note.

5. Plaintiff's claim that S&B "falsely" represented that Green Tree was the beneficiary of the Deed of Trust constitutes an immaterial representation under these circumstances.

6. Notice of the unavailability of a promissory note, does not implicate the Fair Debt Collection Practices Act.

WHEREFORE, having fully answered, S&B respectfully requests that the Complaint be dismissed as to it, that it be awarded its fees in the action, and for such other relief as may be just and proper.

Respectfully Submitted,
SHAPIRO & BURSON, LLP
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2011, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF System, which will then send a notification of such filing (NEF) to the following:

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